THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : I shall first put the motion regarding the Appropriation (Vote on Account) Bill, 1988, to vote. The question is :

"That the Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of India for the services of a part of the financial year 1988-89, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 4 and the Schedule were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI EDUARDO FALEIRO : Sir, I move :

"That the Bill be returned."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : Now I shall put the second Bill to vote. The question is:

"That the Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 1987-88, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 and 3 were added to the Bill.

The Schedule was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI EDUARDO FALEIRO : Sir, I move :

"That the Bill be returned."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): The House stands adjourned and will meet again at 2.30 P.M.

The House then adjourned for lunch at twenty-six minutes past one of the clock.

The House reassembled after lunch at thirty-three minutes past two of the clock,

The Vice-Chairman (Shri Jagesh Desai) in the Chair.

THE CONSTITUTION (AMENDMENT) BILL, 1988

(TO AMEND ARTICLE 356)

SHRI CHITTA BASU (West Bengal): Sir, I rise to move for leave to introduce a Bill further to amend the Constitution of India.

The question was put and the motion was adopted.

SHRI CHITTA BASU : Sir, I introduce the Bill.

THE CONSTITUTION (AMENDMENT) BILL, 1988

(TO AMEND ARTICLE 282)

DR. BAPU KALDATE (Maharashtra): Sir, I beg to move for leave to introduce a Bill further to amend the Constitution of India.

The question was put and the motion was adopted.

DR. BAPU KALDATE : Sir, I introduce the Bill.

THE CONSTITUTION (AMENDMENT) BILL, 1988

(TO AMEND ARTICLE 134): cantd.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Shri Atal Bihari Vajpayee.

श्री अटल बिहारी वाजपेयी (मध्य प्रदेश) : उपसभाध्यक्ष महोदय, दिनांक 11 मार्च, 1988 को अपना संविधान संशोधन विधेयक प्रस्तुत करते समय मैंने जो भाषण दिया था आज मुझे उसे जारी रखना है । महोदय, यह टुकड़ों में भाषण देने की प्रक्रिया बड़ी कष्टदायक है । इसमें श्रोता और वक्ता दोनों का रस भंग हो जाता है ।

श्री लाल कृष्ण आडवाणी (मध्य प्रदेश) : यह टी.वी. सीरियल जैसा है ।

श्री अटल बिहारी वाजपेयी : महोदय, टूटा तार जोड़ना मुश्किल है, लेकिन टूटा तार जोड़ कर पुराना संगीत निकालना और भी कठिन है । यह कठिन काम मुझे करना पड़ेगा । मैं यह स्पष्ट कर दूं कि मेरे विधेयक का उद्देश्य मृत्यु दंड को समाप्त करना नहीं है । जैसा मैंने उस दिन कहा था अनेक देशों में मृत्यु दंड समाप्त किया जा चुका है । अनेक देशों में मृत्यु दंड को समाप्त करने के बारे में विचार हो रहा है, लेकिन उस सवाल को मैं यहां नहीं उठाना चाहता । मेरे संशोधन का उद्देश्य सीमित है । मृत्यु दंड के बारे में न्याय दान की जो प्रक्रिया है उसमें अनेक विसंगतियां हैं । मैं चाहता हूं कि उन का निराकारण किया जाय । इसी लक्ष्य को ध्यान में रख कर मैंने यह विधेयक प्रस्तुत किया है ।

महोदय, क्या यह आश्चर्य की बात नहीं है कि छोटे छोटे मामलों में तो कानून सुप्रीम कोर्ट में अपील करने का अधिकार देता है किन्तु मृत्यु दंड के मामले में इस समय ऐसा कोई अधिकार नहीं है । यदि किसी अभियुक्त को बार कौंसिल सजा दे तो वह सुप्रीम कोर्ट में अपील कर सकता है, अदालत की मान हानि, कंटेमट आफ कोर्ट के अंतर्गत तो सुप्रीम कोर्ट में अपील की जा सकती है, चुनाव संबंधी मामलों में, रिप्रेजंटेशन आफ पीपुल्स एक्ट की दफा 116 (ए) के अधीन उसको सुप्रीम कोर्ट में अपील करने का अधिकार रखा है । संविधान के अनुच्छेद 132 में संशोधन होने तक दीवानी मामलों में भी यदि 20 हजार से अधिक की रकम जुड़ी हुई हो तो सुप्रीम कोर्ट में अपील करने का अधिकार था संसद ने मनुष्य की स्वतंत्रता के महत्व को स्वीकार किया है । हमने सुप्रीम कोर्ट एक्ट इनलार्जमेंट क्रिमिनल अपीलेट जुरिस्डिक्शन पास कर के व्यक्ति को सुप्रीम कोर्ट में अपील करने का अधिकार दिया है यदि हाई कोर्ट ने उस व्यक्ति को दोषमुक्त करने के आदेश को रद्द कर दिया हो और उसे आजीवन कारावास या दस वर्ष या उस से ज्यादा की सजा दी हो । महोदय, क्या यह विचित्र स्थिति नही है कि दस वर्ष या उस से ज्यादा सजा मिलने पर तो हाई कोर्ट के फैसले के खिलाफ सुप्रीम कोर्ट में अपील करने का अधिकार है किन्तु मृत्यु दंड के मामले में ऐसा अधिकार नहीं है । बार कौंसिल का हारा वकील सुप्रीम कोर्ट में जा सकता है, चुनाव में हारा उम्मीदवार भी सर्वोच्च न्यायालय मे गुहार लगा सकता है किन्तु जिस व्यक्ति से जीवित रहने का अधिकार छीना जा रहा है वह अधिकार के तौर पर सुप्रीम कोर्ट में नहीं जा सकता । अपील का अधिकार अनुच्छेद 134(1) में दिया गया है, किन्तु उन्ही मामलों में जिनमें हाई कोर्ट ने व्यक्ति को दोषमुक्ति के आदेश को उलट कर मृत्यु दंड दे दिया हो । किन्तु यदि हाई कोर्ट में अपील में मृत्य दंड की पुष्टि कर दी हो तो नागरिक को स्वतः सुप्रीम कोर्ट में अपील करने का अधिकार नहीं है । उसे पहले सुप्रीम कोर्ट के पास विशेष इजाजत के लिये स्पेशल लीव के लिये जाना पड़ेगा मेरा संशोधन है कि स्पेशल लीव की जरूरत नहीं पड़ती चाहिए । व्यक्ति की स्वतत्रता बहुमूल्य है, किन्तु उसका जीवन अमूल्य है । चुनाव की हार भविष्य में जीत में बदल सकती है किन्तु खोया हुआ जीवन वापस नहीं आ सकता । मानहानि की क्षतिपूर्ति की जा सकती है किन्तु प्राणहानि को पूरा नहीं किया जा सकता । मेरा सदन से अनुरोध है कि मेरे संशोधन को स्वीकार कर मृत्य दंड के सभी मामलों में हाई कोर्ट के फैसले के विरुद्ध सुप्रीम कोर्ट में अपील करने का अधिकार दें । वैसे भी यह जज के विवेक पर छोड़ा गया है कि वह दफा 302 के अधीन किसी को आजीवन कारावास की सजा दे या मृत्य दंड दे । इस के कारण न्यायदान में अनेक विसंगतियां हैं दो जज एक ही तरह के मामलों में अलग-अलग फैसले दे रहे हैं । दो बेंचे अपने-अपने स्व-विवेक का उपयोग कर अलग-अलग परिणामों पर पहुंच रही है । पश्चिमी बंगाल का एक ताजा उदाहरण हमारे सामने है ।वहां हत्या के दो मामले हुए । दोनों मामलों में दो बहुओं की हत्या की गयी । उनके शरीर पर गम्भीर चोट लगी थी । लेकिन एक मामले में जिला अदालत ने आजीवन

कारावास की सजा दी । सुप्रीम कोर्ट ने उसे पुष्ट कर दिया सुप्रीम कोर्ट की बैंच ने जिसकी अध्यक्षता न्यायमूर्ति वेंकटरमैया कर रहे थे यह कह कर उस पर सुप्रीम कोर्ट की मोहर लगा दी कि ऐसे मामलों में कोई रियायत नहीं बरती जानी चाहिए । लेकिन स्मरण रहे उसे आजीवन कारावास की सजा दी गई थी, मृत्य दंड नहीं दिया गया था। किन्तु इसी तरह का जब दूसरा मामला आया तो जिला अदालत ने उसे मौत की सजा दी। हाई कोर्ट ने उसकी पुष्टि की और सुप्रीम कोर्ट ने विशेष अनुमति की याचिका सुनते हुए अनुच्छेद 136 के अंतर्गत मामले को रद्द कर दिया। इसीलिए बचन सिंह के मामले में जस्टिस भगवती ने अपना माइनारिटी जजमेंट देते हुए लिखा था। मैंने उस दिन भी इसका उल्लेख किया था फिर उसको उद्धत करना चाहता हूं :

"In the absence of any standards or principles provided by the Legislature to guide the exercise of sentencing discretion and in view of the fragmented bench structure of the High Courts and the Supreme Court, the safeguards cannot be of any help in eliminating arbitrariness and freakishness in imposition of death penalty."

सवाल यह है कि मृत्य दंड के बारे में आर्बिट्रेरीनेस को कैसे रोका जाए । यदि फ्रिकिशनेस का कोई तत्व है तो उसका निराकरण कैसे किया जाए ! जस्टिस भगवती ने कुछ गाइड लाइंस निर्धारित करने की बात कही है। मैं उस मामले में भी यहां नहीं जा रहा हूं। सरकार उस पर विचार करे यह मेरा अनुरोध है। लेकिन कम से कम काम जो हम कर सकते हैं वह यह है कि मृत्य दंड के सभी मामलों पर हम सुप्रीम कोर्ट जाने का अधिकार दें। यह अधिकार स्वतः होना चाहिए। यह अधिकार संविधान से प्राप्त होना चाहिए इस अधिकार का उपयोग सर्वोच्च न्यायालय की स्वीकृति या अस्वीकृति पर नहीं छोड़ा जाना चाहिए।

महोदय, मेरा निवेदन है कि फांसी पर चढ़ाए जाने वाले व्यक्ति के लिए न्यायालय का दरवाजा खुला रहना चाहिए। आज दरवाजा बंद है। घुसने के लिए न्यायालय की इजाजत लेनी पड़ती है। कभी इजाजत मिलती है, कभी नहीं मिलती। यह स्थिति असंतोषजनक है। जिन्दगी और मौत के सवाल पर अपील का अनिबंधित अधिकार होना चाहिए। जिस उद्देश्य से मैंने यह विधेयक प्रस्तुत किया है, यदि संविधान मे संशोधन किए बिना सुप्रीम कोर्ट के अधिकार को बढ़ा कर यह उद्देश्य प्राप्त किया जा सकता है तो मुझे बड़ी खुशी होगी। मैं चाहूं गा कि इस विधेयक, संशोधन विधेयक को सदन का समर्थन मिले और सरकार भी इसके संबंध में एक रचनात्मक रवैया अपनाए।

धन्यवाद ।

The question was proposed.

SHRI P. N. SUKUL (Uttar Pradesh): Mr. Vice-Chairman, Sir, I rise to support whole-heartedly the Bill brought by our hon. friend Mr. Vajpayee that every case, in which death sentence is awarded, should be reviewed and reconsidered by the Supreme Court. There cannot be two opinions about it. I am not only in favour of this, Sir, I am also in favour of abolition of death sentence. I go a step forward and take this opportunity to recommend that like many other countries *where death sentence has been abolished*, in our country also, we should abolish this capital punishment. Sir, I remember, in the United Kingdom also, it has been abolished and our Constitution is based mainly on that of the United Kingdom, on their conventions and all that. So in this respect also, we should amend one Constitution and should abolish the capital punishment from our statute. In 1983, Sir, the bulk of the British public opinion was in favour of reintroduction of capital punishment. Certain murders had taken place and the British people wanted that it should be revived, it should be reintroduced. But, Sir, the judges, the Church, the medical profession and even the Governors of Prisons were against the reintroduction of capital punishment. And there was a great controversy at that time in our country also. This matter, whether there should be capital punishment or there should not be capital punishment, has been debated for quite some time during the last few years. No doubt our judiciary also, as Mr. Vajpayee has men-

[Shri P. N. Sukul]

tioned, feels that death punishment should be awarded only in the rarest of the rare cases. In *Bachan Singh's* case, the Supreme Court observed that only in the rarest of the rare cases this punishment should be awarded; otherwise, this should be avoided. And our High Courts and Supreme Court award this punishment really in the rarest of the rare cases. It is not so frequently awarded these days. Not only this. There is another case. A person who had been convicted of a murder and who was undergoing life sentence, again committed a murder. That lifer committed a murder. That case was brought in appeal before the Supreme Court. At that time, a five-member Bench of the Supreme Court struck down section 303 of the Indian Penal Code which provided that if a lifer committed murder, then death sentence was the only sentence to be awarded. The Supreme Court said, 'No'. The Supreme Court held that the section was violative of Articles 14 and 21 of the Constitution. Maybe it could be awarded, but it was not the only sentence that could be given. So, all this goes to show that our judiciary also is of the view that as far as possible, death sentence should be avoided. Now, I remember, in the year 1983 there were wide debates on this subject in our country. Mr. Ram Jethmalani was opposed to the abolition of death sentence. And he justified capital punishment on the ground that it was a mark of society's disapproval of heinous and malevolent conduct. That was in an article published in the 'Express Magazine'. I think it was on the 29th May, 1983 issue of the magazine that Mr. Jethmalani justified capital punishment and said, "It is a mark of society's disapproval of heinous and malevolent conduct". But, Sir, in that very magazine, on the 19th June, 1983, another article was published and that article was by the French Minister of Justice—not an ordinary man—Robert Badinter. The caption of the article was 'Justice at the Gallows'. In that article that French Minister said:

> "I would simply like to remind you of the British white paper and the Canadian white paper as well as the work undertaken by the European Council, the Committee for the Prevention of Crimes created by the United Nations and the European Parliament. All these studies came to the same conclusion. Violent crime follows a curve that is a function of social and economic conditions and the evolution of the moral values of society at any given moment, unaffected by the existence or absence of capital punishment. In a word, the death penalty does not reduce the crime nor does its abolition increase it."

Nor does its abolition increase it. That is the crux of the whole thing. We have been having death penalty on our statute book for such a long time. Has that stopped commission of murders in our country? Murders are being committed day and night. Almost everyday we read in newspapers so many persons were murdered here, so many murdered there. Keeping it on the statute book has not gone to the extent of even reducing murders. And I agree with the French Law Minister when he says that even if we abolish it there won't be any increase in murders. Just by abolishing death penalty it does not increase murders just as by having death penalty it does not decrease murders. So it is a matter for consideration of our Government, of our experts in law, whether capital punishment should remain a part of our law or not. As I said, personally I am opposed to it because it serves no purpose. It shows only the vindictiveness of the society towards the convict. It is like tit for tat—you murder and you are murdered. We have to take into consideration the whole gamut of economic and social conditions that exist today, how much they are responsible for such crimes. Today crimes are committed, economic offences are committed, by very monied persons: they want more money, more money. What is the crime of a hungry man who is starving? A hungry man goes and snatches away bread from a bread shop. The point is whether that man should be punished or not for the theft which he committed because he was hungry, or whether the society should be punished for keeping him starved. That is why I feel our economic and social conditions go a long way to condition our conduct in the society. Of course, murders are taking place in Punjab today. Everyday innocent people are being killed by terrorists, by those who want a

separate State, who want to carve out a separate State from our motherland. Now what should be done in this case? As Mr. Vajpayee said, in Rajasthan just for bride burning two judges of the High Court recommended public hanging of two persons, one lady and one man, who were responsible for the bride burning. But the Supreme Court struck it down At that time our Attorney General said that even a convict sentenced to death was entitled to be treated with dignity under Article 21 of the Constitution. And he said that punishment should not involve torture, cruelty and indignity. And the Supreme Court agreed and the Supreme Court declared public hanging as unconstitutional. Whether you hang a man inside a jail or in public, the element of cruelty and torture is the same. It is only a question of dignity, whether his hanging should be witnessed by people or it should not be witnessed by people. Our Supreme Court said it was unconstitutional. But two judges did award that punishment. As Vajpayeeji said, it depends upon the discretion of the judge, on that person. When this question of revival of capital punishment was raised in the House of Commons, at that time Amnesty International opposed the revival of hanging and it said revival of hanging would only provide momentum to death sentences and executions, many for political purposes all over the world. That was said by Amnesty International. It was said by Amnesty International that if it was revived, then for political reasons people might be sent to the gallows and they might be made to die by hanging, by death penalty. We also know that even for identical crimes, the prosecutors being different and the judges being different, two different sentences may be awarded, one by one court and the other by another court. Then who is correct? So, this kind of a loophole should not be left there where the life a person is concerned. This loophole should not be there at all. Mr. Vajpayee's Bill only says that it should be considered by the Supreme Court invariably and necessarily, that matter must be brought before the Supreme Court and High Courts alone must not be competent to award that punishment finally.

As I said earlier, I entirely agree with him that before it is abolished, at least this much should be done and that is that the matter whether a man sould be made to die or not should be considered by the highest court in the country. If the Supreme Court can consider matters involving more than twenty thousand rupees, then the life of a man is much more precious than thousand rupees and, therefore, it must be compulsorily brought, as I said before the Supreme Court. One should not be made to die unless the Supreme Court has considered his case. Our Government also should consider whether capital punishment can be abolished or cannot be abolished and whether it should be abolished or should not be abolished. On the British pattern, I think, it can be very easily abolished. If a man has committed a murder, you can only say that he cannot be granted parole for twenty years. What happens today is that you award life imprisonment and, after five years, that man gets parole, he is paroled out, and so, the very purpose of that sentence is defeated. In such cases where a pre-planned murder has been committed for where innocent people have been done to death, as is happening in Punjab, or where brides are burnt, you can keep the culprit behind the bars for, say, fifteen years or twenty years so that he can at least reconsider the whole thing and he can of course, himself come to the conclusion that he has committed a wrong which he should not have committed and when he is out of the jail finally, he may leave an impression upon the society to the effect that crimes should not be committed. But, if you kill him and if you kill him wrongly, then, of course, it is a blot on our society. If we ourselves cannot remove those conditions, those circumstances, prevailing in the country, as I said, social conditions, economic conditions, because of which murders and other crimes are committed, we also make him die unnecessarily. So, in my humble opinion, at least our Government can accept the Bill tabled by Mr. Vajpayee and I also urge upon the Government to consider very very seriously having a debate in Parliament, if necessary, and outside Parliament

[Shri P. N. Sukul]

if necessary, on the question whether capital punishment should be abolished or should not be abolished.

With these words, Sir, I support the Bill.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Now, Mr Satyanarayan Reddy.

3.00 P.M.

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh): Mr. Vice-Chairman, Sir I rise to support the Constitution (Amendment) Bill, 1988 moved by Shri Vajpayee. This constitutional amendment is very, very important. But I am sure that ultimately when the debate is over either the concerned Minister will ask the mover to withdraw the amendment as usually it happens, or it will be defeated. But I sincerely, appeal to the Minister to consider this very important piece of legislation. In the Statement of Objects and Reasons, Shri Vajpayee has stated:

> "Death punishment is qualitatively different from any other punishment including life imprisonment inasmuch as it is irreversible. It cannot be revoked if subsequently it is found that the person sentenced to death was wrongly convicted and the miscarriage of justice becomes irrevocable."

So this is very important. It is very simple. The original article 134 of the Constitution says:

> "134. Appellate jurisdiction of Supreme Court in regard to criminal matters.—(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—
>
> (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or. . ."

The proposed amendment to article 134(a) reads:

> "(a) has on appeal confirmed an order of conviction or reversed an order of acquittal of an accused person and sentenced him to death; or

This is a very simple amendment. Why has he brought forward this amendment? In the Statement of Objects and Reasons, and also in his speech, the mover has claimed that we have to do justice to the person who has been convicted the sentence of death. The purpose of the Bill is not to demand abolition of death sentence. Of course, there is a large opinion in this world, and many countries have pleaded, for the abolition of death sentence. Many agitations have been launched for this. I myself have addressed many meetings and pleaded for consideration of this. Of course, the purpose of the present Bill is not to demand this. It says that a person who has been sentenced to death should have the right of appeal to the Supreme Court, without facing the difficulties as in the present article. In the Statement of Objects and Reasons it has been stated:

> "Under article 136 of the Constitution the Supreme Court has discretionary powers to grant special leave to appeal. These legislative and constitutional safeguards in the absence of any standards or principles provided by the legislature to guide the exercise of discretion in imposition of death penalty and in view of the fragmented bench structure of the High Courts and the Supreme Court are frugal and peripheral. . ."

Then:

> "The issue of eliminating or not eliminating life is far more important than even the question of liberty. Yet an accused person under sentence or death has no absolute right to appeal to Supreme Court. Right of appeal is provided under article 134(1)(a) only if a High Court reverses an order of acquittal and imposes death penalty."

The present amendment has been moved to remove these things. The Minister of Law and Justice is a very considerate person and a gentleman. He knows the law. He understands the implication of these things. I do not think that if he would have been on this side or if he would not have been a Minister, he would have objected to it. On the contrary, he would have been in favour of this amendment. So, I think if

the Minister is not in a position to straightway accept this amendment Bill, at least he must give an assurance to this House that the Government would seriously consider it or that he would seriously put it before the Government the views expressed by the Members of this House. It is a very reasonable amendment which has been brought. Great injustice would be done to those who would be awarded the death sentence and no provision to appeal to Supreme Court. To that extent the scope of this Bill is very important. We hope that justice will be done by accepting this amendment.

बाजपेयी जी ने इस बिल के जरिए मृत्यु दण्ड समाप्त करने के लिए नहीं कहा है वैसे कई देशों में मृत्यु दण्ड समाप्त करने के संबंध में कानून बनाये गये हैं और कानून बनने चाहिये । मैं भी इस विचार का हूं कि मृत्यु दण्ड को समाप्त करना चाहिये, समाप्त करना है । मगर मैं नहीं समझता कि सरकार इतनी जुर्रत करेगी, इतनी हिम्मत करेगी । सरकार मे इतनी जुर्रत नहीं कि मृत्यु दण्ड को समाप्त करने के बारे में कोई कानून पास करे । सरकार में मृत्यु दण्ड को समाप्त करने की हिम्मत जुर्रत या ताकत तो नहीं है लेकिन उसमें इतनी तो हिम्मत जरूर होनी चाहिये कि बाजपेयी जी जो यह संविधान संशोधन विधेयक लाये हैं जिसमें बहुत से मामूली परिवर्तन करने है, उसको स्वीकार कर सके । इसमें कोई ज्यादा हिम्मत, जुर्रत या ताकत की जरूरत नहीं है, केवल बुद्धि की जरूरत है, बुद्धि का उपयोग करने की जरूरत है । तो इस चीज को मद्देनजर रखते हुये सरकार को सोचना चाहिये, विचार करना चाहिये और लोगों को न्याय पहुंचाने के लिए बाजपेयी जी जो संशोधन लाये हैं इसको मंजूर करना चाहिये । धन्यवाद ।

SHRI V. NARAYANASAMY (Pondicherry): Mr. Vice-Chairman, Sir, I thank you for having given me this opportunity to speak on this Constitution Amendment Bill moved by hon. Vajpayeeji seeking to amend Article 134 of the Constitution. This amendment which is sought is on the ground of social justice, on the ground of humanity and also on the ground of liberty, equality and freedom. Sir, now we have been proclaming to the world that we are marching towards the 21st century. But the Supreme Court has given an unfortunate finding relating to death sentence saying that only in the rarest of rare cases the Supreme Court can interfere. Such a judgment by the Supreme Court has shocked the entire country. Sir, under article 134, two contingencies have been provided. One is that 'if the High Court reserves the order of acquittal'. Secondly, when the High Court takes a matter from the subordinate court and then decides the matter and punishes a person with death sentence. Only in these two contingencies the Supreme Court has been given the power to try the cases in which the High Court has given death sentence. The other contingency is when the High Court gives leave to file an appeal, then a special appeal can be moved in the Supreme Court. Here, I would like to give the offences which come under the IPC. Sections 299, 300 and 307 cover a person who is committing an offence of death, culpable homicide amounting to murder, culpable homicide not amounting to murder. Culpable homicide amounting to murder, Section 303 provides clearly for death sentence. Section 304 relates to culpable homicide amounting to murder. Sir, the court, right from the sessions court to the High Court have been given the power to pass a sentence of death on any person who has committed that offence. Sir, if we see the changed circumstances and the judicial system in the world arena, we find that now the courts have taken a lenient view even in the case of person who committed a murder. They are considering such persons for the purpose of reforming them in future.

Sir, I find from article 134 that in cases where the High Court reverses the findings of the sessions court the Supreme Court then can pass any sentence. It has been rightly observed and it has been rightly suggested by the hon. Member Vajpayeeji for adding one clause: "has on appeal confirmed an order of conviction". Sir, this is a correct amendment because the Objects and Reasons are very clear to show that in more than 40 per cent of the cases persons who have been innocent were punished whether it is at the lower court or

[Shri V. Narayanasamy]

at the High Court. Sir, peculiarly enough, the High Court to a certain extent goes through the question of facts. They are not entirely depending on the facts. They strictly apply the law. Under those circumstances, even if the subordinate court, viz. the sessions court passes of death sentence to any person under cooked up evidence or circumstantial evidence, then the High Court will definitely miss a chance of giving justice to person who has been involved in the murder. Therefore, we want that even a person who has been punished by the High Court should get a right of appeal to the Supreme Court. This is a justifiable demand. The criminal jurisprudence is that a person is to be treated as innocent until his guilt is proved. Now, in this case, in this particular amendment we find that under article 134 a provision has been added that the Supreme Court should have enormous powers to deal with cases which have been decided by the High Court, even the cases of convincting a person Sir, simultaneously we should also go in for amending the Criminal Procedure Code. When this amendment is acceptable to the hon. Minister, for purposes of appeal, revision and other matters, simultaneously we should go in for an amendment to the Criminal Procedure Code. Sir, I would like to quote the death sentences which have been passed in various High Courts relating to persons who have been involved in criminal cases, specially the cases of murder. I know personally several cases since I was practising at the district level and I had the opportunity to go to the High Court also in Madras. I find that as I earlier narrated that at least 30 to 40 per cent of the cases only by circumstantial evidence the sessions court decides.

The first appeal is only to the High Court. Kindly take the matter of civil jurisprudence when we are applying analogy whether it is a small dispute relating to money or a dispute regarding property. Normally a person goes to the munsif court, then the appeal is preferred to the district court, then he goes to he High Court, then by special leave he gets the right of second appeal or even modification before the Supreme Court. When that remedy is available for a person to exhaust his civil liberties, why not give it to a person who is involved in criminal offences. Criminal jurisprudence is very clear. As I have already stated that the person who has committed the offence is to be punished. A person who has not committed the offence and who is not involved in the offence has to be freed. Now we find the investigation process going on in our country. The police investigation is rather ridiculous. Now, Sir, the Criminal Procedure Code we had of 1908 and that Criminal Procedure Code we are still applying today. In 1973 an amendment came and a new Criminal Procedure Code came and even in that many of the procedures have not been adopted. Sir, I will quote only one case about investigation in the United States. The investigation of criminal offences is on the question of deciding the matter between the public prosecutor and the counsel for the accused and then the matter goes to the court. But here we find that whenever an FIR is filed, Police does consider it a gospel truth unless and until when it is referred by the police itself.

Sir, the police have been given enormous power in our country. But in other countries I find that through negotiated process up to the level of cases which are not involving human body, theft and other matters. it has been decided between the public prosecutor and the counsel for the accused himself, when it is larger offences it has been referred to the federal court. Sir, I would now like to quote that the powers which have been vested with the police regarding the investigation process are to be curbed to the extent that the police are misusing their powers. Under these circumstances when the Supreme Court has not given the authority for the purpose of finding it, this is the highest court in our land, the person has no other appeal from that. That being the case the right which is to be given to an accused person to present his case till the last moment, of his fate being decided, this amendment undoubtedly is justified, and I hope the hon. Minister will agree to it.

In fact, the hon. Minister would have thought of this amendment when he was himself a practising advocate in the Supreme Court itself. Therefore, Sir, I feel that the Hon. Minister will agree to this and he will also agree for passing this Bill. Thank you.

श्री राम अवधेश सिंह (बिहार) : उपसभाध्यक्ष महोदय, मैं माननीय वाजपेयी जी के संशोधन विधेयक का समर्थन करता हूं । जिस ढंग से अभी सर्वोच्च न्यायालय का दरवाजा बन्द रखा गया है मृत्यु-दण्ड के बारे में, वह किसी भी सभ्य समाज के लिए उचित नहीं जान पड़ता है । जैसा वाजपेयी जी ने कहा है कि जो जान चली जाएगी, वह वापस फिर नहीं आ सकती । इसके अलावा दूसरी तरह की सजाएं है, जिसमें सर्वोच्च न्यायालय के दरवाजे खुले हैं अन्तिम फैसला पाने के लिए, तो फिर आदमी की जिंदगी समाप्त होने का जहां अन्तिम निर्णय हो रहा हो उसमें अगर इस देश के नागरिक को सर्वोच्च न्यायपालिका तक जाने का हक न हो तो इससे लगता है कि कार्यपालिका को हमारी न्यायपालिका पर विश्वास नहीं है । एक ओर तो सर्वोच्च न्यायपालिका को सबसे ज्यादा अधिकार दिया गया है, कानून की व्याख्या तक करने का अधिकार है लेकिन मृत्यु दण्ड के बारे में उसका दरवाजा ऐसे मामलों में बन्द किया गया है जिसमें लगातार नीचे की दो अदालतों से मृत्यु दण्ड का फैसला हो जाये । महोदय, आप जानते हैं जो इस समय की न्यायपालिका है, जिस तरह से न्यायपालिका का गठन हो रहा है उसमें ऐसी बहुत सी संभावनाएं होती हैं कि एक ही तरह के तथ्यों के रहते हुये भी जजों की अपनी पृष्ठभूमि के अनुसार वे उन तथ्यों की अपने ढंग से व्याख्या करते हैं और दंड अलग-अलग हो सकते हैं । महोदय, एक ही धारा में होती है आजीवन कारावास की और दूसरी धारा में सजा होती है फांसी की । तो अलग-अलग जजों की पृष्ठभूमि के अनुसार एक ही तरह के तथ्यों की रोशनी में भी अगर मृत्यु दण्ड में और आजीवन कारावास में अन्तर हो तो उस मुजरिम नागरिक को सर्वोच्च न्यायालय तक जाने का अधिकार होना चाहिये । महोदय, मैं तो यहां तक कहने वाला हूं कि सभ्य समाज में मृत्यु दण्ड नहीं होना चाहिये । मैं सुकुल जी से सहमत हूं कि मृत्यु दण्ड किसी उच्च और सभ्य समाज में होना चाहिये और आने वाली पीढ़ी इसको जरूर समाप्त कर देगी । सारी दुनिया में इस विषय पर विवाद भी चल रहा है कि मृत्यु दण्ड होना चाहिये या नहीं होना चाहिये ।

श्री धर्मचन्द्र प्रशांत (जम्मू और काश्मीर) : चाहे दस व्यक्तियों को मार दे ।

श्री राम अवधेश सिंह : महोदय, मैं यह कह रहा हूं कि व्यवस्था ऐसी बनायी जानी चाहिये कि मारने की स्थिति पदा ही न हो । ऐसा माहौल न बने कि क्रिमिनल समाज में पैदा हों । यदि आप ऐसी व्यवस्था बनायेंगे कि जहां क्रिमिनल पैदा होंगे तो निश्चय ही हिंसक वारदातें पैदा होंगी । जिस देश के सामाजिक वातावरण में आर्थिक विषमता और धार्मिक उन्माद बना रहेगा उस देश में हिंसा पैदा होगी । उसको न्यायपालिका का दण्ड नहीं रोक सकता है । उसकी फांसी चढ़ा कर आप नहीं रोक सकते । आप चाहे न्यायपालिका के हाथ में मृत्यु दण्ड दे दें और उसके आधार पर चाहें कि किसी समाज से हिंसा को खत्म कर दें तो यह कोरा स्वप्न है । इसके लिए यह व्यवस्था जवाबदेह है । इस व्यवस्था को ठीक करना चाहिये । आज रूस में हत्यायें क्यों नहीं होतीं रास्ता चलते ? चीन में रास्ता चलते हत्यायें क्यो नही होतीं ?

श्री अटल बिहारी वाजपेयी : होती हैं ।

श्री राम अवधेश सिंह : बहुत कम होती हैं हमारी तुलना में और अमेरिका की सामाजिक और आर्थिक व्यवस्था की तुलना में वहां हत्यायें बहुत क्यों होती हैं और अगर होती हैं तो उसका [illegible] मिल जाता हैं । वहां दस-पन्द्रह साल तक केस नहीं चलते हैं लेकिन हमारे यहां आज हत्या हुई, सजायें [illegible] टाये गए तो भी दस-पन्द्रह साल तक केस चलते रहते हैं ।

[श्री राम अवधेश सिंह]

इंदिरा जी का केस 3, साढ़े तीन साल चल गया । तो जो प्रधान मंत्री की हत्या का केस 3, 4 साल चलता है तो आम आदमी की हत्या का मामला कितने दिन चलेगा । तो न्यायपालिका में न्याय, देरी में जो विलम्ब होता है उसकी वजह से आर्थिक सामाजिक और राजनैतिक शोषण की वजह से जो वातावरण बनता है उसमें हिंसा पैदा होती है । अमरीका आज दुनिया में सबसे सम्पन्न देश है लेकिन सबसे अधिक अपराध अमरीका में होते हैं । इसलिए जो व्यवस्था है उसको दुरुस्त करने की बात करिए । मैं उन लोगों में से हूं जो मृत्यु दंड को असभ्य समाज का एक प्रतीक मानते हैं और असभ्य समाज की यह एक निशानी है कि जान मारने वाले की जान मारो । उसने जान मारी, इसने जान मार दी । ऐसी व्यवस्था बनायी जानी चाहिये कि जान मारने की स्थिति ही पैदा न हो । तो मैं यह कहना चाहता हूं कि इस देश के हर नागरिक को यह भरोसा है कि सर्वोच्च न्यायालय जो है वहां न्याय मिलता है । लोगों की ऐसी मान्यता है कि नीचे की अदालतों में पैरवी हो सकती है, हाई कोर्ट तक भी पैरवी पहुंचायी जा सकती है, लेकिन सर्वोच्च न्यायालय में पैरवी नहीं पहुंचायी जा सकती और वहां न्याय मिलता है । तो ऐसा विश्वास नागरिक को है । उस विश्वास को धक्का न लगे और विश्वास से भी ऊपर जो चीज है वह यह कि ऐसा नहीं लगना चाहिये कि भिन्न-भिन्न तरह का न्याय होता है क्योंकि जान से बढ़ कर कोई चीज नहीं है । धरती का सर्वोत्तम प्राणी मनुष्य है और उसकी जान लेने का जहां सवाल हो तो उस वक्त हमको उदारतापूर्वक विचार करना चाहिये और अगर यह मान लें कि सर्वोच्च न्यायालय में जाने का हर आदमी को और खास कर जान के मामले में मौका है जो कि उसको निश्चित तौर पर मिलना चाहिये तो ठीक होगा । इसलिए मैं इसका समर्थन करता हूं और मांग करता हूं कि हमारे वाजपेयी जी यह जो संविधान संशोधन विधेयक लाये हैं इस पर पूरे सदन की एक राय है, दोनों तरफ की राय एक है और इसमें सरकार के लिए कोई प्रतिष्ठा का सवाल भी नहीं है इसलिए मैं समझता हूं कि सरकार इसको मान ले । धन्यवाद ।

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Now, Shri Matto. Before that, may I have the leave of the House to requests Mr. P. N. Sukul occupy the Chair?

[The Vice Chairman (Shri P.N. Sukal) in the Chair]

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): Mr. Vice-Chairman, Sir, I rise to wholeheartedly support the Bill moved by Shri Atal Bihari Vajpayee. In the Statement of Objects and Reasons what has stuck me the most is the opening paragraph, wherein Shri Vajpayee says—I quote:

> "Death punishment is qualitatively different from any other punishment including life imprisonment in as much as it irreversible. It cannot be revoked if subsequently it is found that the person sentenced to death was wrongly convicted and the miscarriage of justice becomes irrevocable".

Sir, there are certain provisions in the Constitution itself. But you cannot do it unless the High Court or the Supreme Court allows a person to go in appeal against the death sentence. Even in the case of an ordinary conviction regarding wrongful confinement or any other thing a person can go to the Supreme Court even on the original side not even in appeal, but on the orginal side. The right to life has been guaranteed under article 21 of the Constitution. It is not proper that we deny a person who has been sentenced to death the right to go to the highest court of the land which the framers of the Constitution had in their wisdom put in for safeguarding the individual's interests.

As Mr. Vajpayee has himself stated, there have been conflicting judgements of the Supreme Court which in Bachchan Singh's case has also said that the legislature has not provided any guidelines to the courts for exercising this discretion. The

discretion could be qualitatively different from one Judge to another. A Judge may honestly feel that this is a fit case for being sent to the Supreme Court, but another Judge of the High Court may also honestly feel that this murder case is not fit for being sent to the Supreme Court. Mr. Vajpayee wants that the discretionary part should be eshrined in the Constitution itself and the right to appeal should be given to the person concerned.

The hon. Minister while replying would say that this might mount the already high level of cases pending in the Supreme Court. But the right to life is the Prime right and all other rights—the right to property, even the right to freedom of speech—are subsidiary to the right to life. So this consideration should not come in the way. On the contrary, if three is really such a problem, you can increase the number of Judges of the Supreme Court. But the basic fundamental thing is that the right of a person to be heard at the highest level *suo moto*, without anybody's discretion coming in the way must be guaranted to him.

With these words, I hope the hon. Minister will react favourably and *suo moto* come forward with an amendment. I know he has got to undergo certain process. I would request him to go through those processes. It may take some time for the Law Ministry to frame an amendment of the Constitution. But this is an amendment which must be done, which shall be liked by all sections of the House as well as the public in general. So I think the hon. Minister will react favourably to Shri Vajayee's proposal and accede to the request of this House and come out with an amendment of the Constitution giving the right of being read by the highest court in case of a death sentence.

With these words, I support the Bill.

THE VICE-CHAIRMAN (SHRI P. N. SUKUL): Does any other Member want to speak on this? Hon'ble Minister.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI HANS RAJ BHARDWAJ): I must thank Vajpayeeji, who is the mover of this Bill, and other speakers for having raised a very important human issue. Sir after having put in about 30 years of practice at the Bar, and most of it on the criminal side, I have been able to handle at least a thousand cases including that of murder, both as a prosecutor as well as defence counsel. I have argued cases which were very brutal. There are some cases which, when they were tried in court, attacked the sympathy of men. I have seen a case in Delhi—case of Golcha murder—in which I defended one of the accused and my conscience was roused so much that thereafter I did not appear in any murder case. The impression left on me by that trial was of a very different type of impression, namely, resulted in the shaking of my conscience. When something wrong happens to a person and he feels the impact of that wrong in his hreart, whatever he or she says in remorse or in vengeance, it sometimes comes true. Crime and punishment is a long history. When we talk of the crime the punishment when we determined what actually the punishment should be of a particular crime, then, normally, it differs from the thinking of individual to individual, society to society and it also depends on the degree of civilisation of the society. The more we have travelled as a civilised society, the more reforms have come in our country.

The Supreme Court has gone into the validity of the death sentence as well as the desirability of inflicting the death penalty. Whenever the courts have discussed the cruelty of the punishment, they had necessarily to see the validity of the death sentence also because when you say that something should not be found in a civilised society, then you have to go into the basic character of that punishment of treatment to the human being. I will come to that part later as what the Supreme Court ultimately has come to say.

But I will first submit about the scheme of the criminal law, the criminal jurisprudence in our country which is a very well accepted and a very fair procedure as in all the civilised sopleties of the world today. Our system is well known, after the British system in crimminal trials. We have, for instance,

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death penalty in a murder case. There is an alternate sentence that is also provided. Life sentence or death—these are the two sentences prescribed under the law. So, when we talk about public hanging and all things of this type, they are not prescribed under the law. Therefore, nobody can think of these things. That is why the Attorney General spoke against if the Supreme Court when the Rajasthan Court inflict sought to it. Although they wanted it to be shown to the public they were for public hanging but since it was not prescribed by the law the Supreme Court had to stop it. Therefore, in our country, when an offence is committed, the procedure prescribed by the law in the Code of Criminal Procedure has to be followed. That is what the Constitution requires, also that you cannot take away the liberty of citizen except by the due process of law. Therefore, when you have a case of murder, you have to give the accused a trial.

Fortunately, in our country, the trial procedure is very lengthy. Some of the speakers have said that it is so lengthy that sometimes people who are fighting for justice are frustrated. It is lengthy, but it is very fair. So, the moment a case is investigated, the man is put on trial, and the papers and everything that is likely to be used against him during the trial are supplied to the accused. He is put on sufficient guard, sufficient notice of what is going to be produced against him in the trial, and the court allows him a trial assisted by a counsel. Finally, after hearing both sides, prosecution and defence, the court comes to a definite conclusion on the question of conviction.

That is where I would submit respectfully, our laws in 1973 after the Code was amended, have given an added safeguard to an accused. The moment court finds that there is a case of conviction, the court will thereafter call upon the man to argue on the question of sentence. If you permit me I will quote section 235 of the Criminal Proceure Code, from which the Bachchan Singh case followed. Really the issue was section 235 in that case. It reads:

> "After hearing arguments on points of law if any, the Judge shall give judgement in the case."

If the accused is convicted the "Judge shall—it is the word 'shall'—unless he proceeds in accordance with the provisions of Section 360, hear the case on the question of sentence and then pass sentence on him according to law". This is in normal cases. But if you read another Section 354(3), you will find in the case of death sentence there is a special safeguard built in Section 354 of the Cr. P. C. That also I will read:

> "When the conviction is for an offence punishable with death, the only alternative being imprisonment for life or imprisonment for year, the judgement shall state the reasons for the sentence awaited and in the case of death sentence, the special reason for that sentence."

So, it is not that in our system of law there is absolutely no consideration for life. It is in-built at various stages of trial, it is in built in various stages of appeal and then finally in the Constitutional court. What is the safeguard, I will just come to that. So, when a case is tried, the court expects that the accused will be given a separate hearing. The trial is dissected into two parts. One is the trial for onviction, the other is the sentencing part. So the moment you reach the stage of sentence, the court is heading. The trial is dissected into two expected to give a separate hearing to the accused to hear him on the question of sentence. That is why it is given. It is given only to show a fair sense of individual responsibility that in case you have got certain mitigating circumstances to tell to the court, of which you may be given some benefit, please do that at that time. That is where all your arguments are met. when I say the cases vary from circumstances to circumstances, cases vary in different times and in different circumstances. So, if you have got a case for a lenient view being taken by the Court, you have at that time to submit to the court that these are the circumstances which mitigate the punishment. So, these two aspects cannot be lost sight of when we say blanket rule and straightway that the killer or the person who has been inflicted death

penalty has no safeguard. I submit that from the very beginning we will find that in a case, as I submitted in Section 354(3) of the Code of Criminal Procedure, special reasons have to be recorded—why you are making a departure from the common accepted principle that life sentence is a rule, and death sentence is an exception. So, as a rule in normal cases life sentence should be given in a murder case, but if you want to depart from that rule, you must give your reasons why you are giving this extremealty. That is why as Vajpayee Ji stated in Bachchan Singh's case, what was desired was that a hearing was not given to the accused on the question of the sentence. That is why the Supreme Court said that Section 235(2) is mandatory. It cannot be ignored or it cannot be set at naught by the courts. Therefore, they it said that there should be some sort of a system by which the mitigating circumstances, which could be brought on record of the case, should be allowed to be brought by giving a separate opportunity to the accused. In that case particularly the Court listed the following circumstances which could be of assistance to the accused in sowig the mitigation committed under the influence of extreme or his case. One was that the offence was tinuing threat to the society. (4th) The the age of the accused he is either too young or too old. Three, the probability that the accused would not commit criminal acts or violence as would constitute a continuing threat to the society. (4) the probability that the accused can be reformed and rehabilitated. (5th). The accused Circumstances of the case, that the accused believed that he was morally justified in commiting the offence. (6th) The accused acted under the duress and domination of another person. (7th) The condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate criminality of his conduct".

The court did not give concrete standards for laying down a precise area where death penalty alone could be inflicted. These are the broad lines which the court considered in those cases. Again the court appreciated as I started with 235 and 354 (3) of Code of Criminal Procedure and has gone into defectly and has said that this is necessary because you are inflicting the extreme penalty on a man and life is precious. Therefore, it should not be taken lightly by the courts. The courts must adhere to these basic principles of penology that when you are giving the extreme penalty go to the extreme consideration is to how you can avoid inflicting it. But sometimes the courts after having done these exercises free moved to inflict the extreme penalty. That is the area where the courts have to consider. I am very happy to say that in our country now almost it has come to be a sort of standard that infliction of death penalty has been curtailed to only to those cases which are highly outrageous, barbaric and brutal in nature. They have been called rarest of the rare cases. In the latest decision of Deena's case, the rarest of the rare cases. The Supreme Court said "You can inflict the penalty." I would submit what is meant by rarest of the rare cases and whether any standards have been laid down by the Supreme Court to which I will come later on. But I will take the House to the later part of the criminal trial which does not end in a case of murder. When a Sessions court which is normally a trial court for the offences of murder, inflicts or orders that the accused shall suffer death penalty, the trial does not end there. There is a duty cast on the court that as a murder reference the record of sentence shall be transmitted to the High Court for confirmation and there whether the accused goes or not, whether the accused files an appeal, or not, automatically it is the duty cast on the Sessions court to transmit the records of the case to the High Court and the High Court has to go into the question of his sentence and also the facts and circumstances of the case again, the moment there is a reference. It is now accepted law laid by the Supreme Court that even in a case of reference by Sessions court where a man has been found guilty and imposed death penalty, the High Court has a mandatory and legal duty, whether the accused insists or not, to go into the

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facts, the evidence and circumstances of the case as if the High Court was hearing a regular appeal by the accused into the entire case, and then, come to a definite conclusion. Even then the principles enunciated in Bachchan Singh's case 235(2) have again to be gone into. The moment the High Court finds that there is a case of conviction and concurs that the conviction is good, then the court will again pause, the court has to pause and give another opportunity to the accused and call upon the accused to submit on the question of sentence.

Sir, I may remind Vajpayeeji that in the High Court in a murder reference the division Bench of the court, two honourable Judges of the highest court in criminal law, Supreme Court, is not the highest court in criminal law, Supreme Court was created by the Constitution, will go into the case. The highest criminal court, according to the Code of Criminal Procedure, is the High Court and two Honourable Judges of the High Court hear it as a duty. With the latest provisions of legal aid, in many cases where the accused is unrepresented, the courts have directed the State to pay a reasonable and good fee to the counsel of the accused person. In the most sensational cases, very scholarly and eminent lawyers come to defend them. You know it very well that they defend them. It is not that the accused goes unheard in the High Court. The High Court, according to the scheme of criminal jurisprudence of our country, is the highest court on facts and law in criminal matters and in criminal matters when the two Judges hear, they hear even on the question of sentence. In Bachchan Singh's case this is what the Court has insisted upon. When the High Court decides the Supreme Court expects the litigation to come to an end because you cannot forget the other part of the criminal jurisprudence which is also accepted by the Supreme Court itself that you cannot have a fresh consideration when there is concurrent finding of facts in a criminal matter. That principle, I will discuss later on because it is a question of purely legalistic approach and the scholarly approach has a different dimension for appreciation. But so far as courts are concerned, their approach is more or less bound by the decisions of the Supreme Court and the High Court and they cannot lay down different laws for different matters. But what is done at the time of hearing of an appeal is the High Court has to give another finding whether the accused, the appellant is entitled to a lesser penalty of life sentence. And if the Division Bench of the High Court has to make an exception from the general principle of life sentence to that of a death sentence, then they must record their reasons. Sir, that is where we must accept the wisdom of the Court's decisions. Why do they want and why do they insist that reasons must be recorded? The reasons are not far to seek because while the appellate Court decides the case, it must know whether it is the rarest of the rare cases which requires death penalty to be inflicted, unless, of course, Parliament by wisdom abolishes it. That is a different issue That is a different argument. I do not know whether the time is ripe in our country for that. So far as the law of the land maintains that there is a death penalty, it is not a resolution by which we can abolish it. This is a specific resolution by which Vajpayeeji wants that in every case of murder where death penalty has been imposed, there should be an appeal to the Supreme Court. There should be no Art. 136 or Art. 134 as it exists today. There should be a right to go to the Supreme Court in all cases of death penalty. This is, in a nutshell, the provision. I shall submit, with great respect, the system of penology and jurisprudence in our counry has been established over the years and we have to go step by step on the ladder. The accused must say that Articles 21 and 22 have been met because he is entitled to a reasonable and fair trial, whether it be a case of death sentence or otherwise, because the Constitutional provision is that you must give a reasonable and fair trial and punishment must be inflicted which is prescribed by law and the accused is entitled to hearing on the question of sentence both in trial and in appeal.

Now, I take you through the later part of question in regard to the Supreme

Court decision with regard to the appreciation of evidence. When you take the case straightway to the Supreme Court then you expect the Supreme Court to go into the facts of each case again, the circumstances of each case again, as if you want, in criminal cases of death penalty, there should be right of two appeal and not one. That would amount to this. Then you change the whole scheme. If there is a magisterial trial, you have the right of an appeal in the Sessions Court, revision and then there is section 482 of the Code of Criminal Procedure. There are no two appeals. When the trial is done by the Sessions Court, there is one appeal to the High Court. There are no two appeals. When there is a trial by the High Court in its original side, I think, in one or two cases particularly under the Special Courts Act, they were given a special right of appeal in the Act itself. But in Antulay's case they clarified that you can come in appeal, if there is a judgment against the accused in the High Court originally. You have the principle of one appeal in our country. That has been accepted in Criminal matters. Revisions and other miscellaneous petitions are, of course, there under various provisions. If the Supreme Court is approached even by Article 136, in criminal matters, the first question is whether any important quesetion of law of public importance is involved. Then alone the Supreme Court will interfere. The question is not whether you have a hearing before the High Court or the Sessions Court. There is a basic good in Article 134. Suppose the High Court reverses somebody's acquittal in appeal and inflicts the death penalty. If Article 134 would not give him that right, then he will have no right of appeal. That is why in that case alone there is a provision that he can be heard by the Supreme Court in full appeal. Otherwise, the matter should end at the High Court hearing the confirmation of the death sentence reference by the Division Bench. The rule then is final the "rarest of rare cases" for death sentence. The Division Bench must say that they have gone into the question of the sentence and find that it is the rarest of rare cases on account of such and such circumstances. Then appellate the Court can say, Well, we do not find that there are circumstances good enough to give somebody the death penalty. So, we do not accept it. For that also, the Supreme Court, in a later case of Punjab had gone into it and I remember that it was in 1983. Yes, that was in 1983, in Machchi Singh's case and that was also a Punjab case and they had at that time also discussed several principle with regard to penalty as well as death sentence and the basic principles laid down in that case were very sound. After Dina's case—this was another case—it was stated that death penalty should be given in the rarest of rare cases. So, it was curtailed to the bare minimum. But this is a case which was Machchi Singh's case where connected appeals were there and which the Supreme Court had gone into and I may submit for Mr. Vajpayee's consideration a very beautiful argument which the Supreme Court had found in defence of the death penalty kept in the Statute Book. I will now quote:

> "Having dealt with the appeals on merits from the standpoint of proof of guilty and validity or otherwise of the order of conviction, we now come face to face with the problem indicated when the curtain was lifted, namely, the application of the "rarest of rare cases" rule to the facts "of the individual cases in the context of the relevant guidelines, some reflections on the question of death penalty may appropriately be made before we tackle the said question in the prespective of the present group of appeals. The reasons why the community as a whole does not endorse the humanistic approach reflected in the "death-sentence-in no-case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of the "reverence-for-life" principle."

I tihnk this is what your basic plank is, the basic plank of your argument, that is, reverence for life. Everybody has reverence for life and not revenge fo life. But it is not an individual's approach or a few people's approach. It is the society as a whole which has to accept that principle. It is society which surrenders its individual right. Every society surrenders some of the individual rights to the State for protection and for better and for happeir and more prosperous life as against

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the aggressions from individuals and from outside.

4.00 P.M.

I quote again:

"When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shakles of this doctrine. Secondly, it has to be realised that every member of the community is able to live with safety without his or her life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by killing a member of the community which protects the murderer himself from being killed or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in the rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinions as regards the desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of motive the manner of commission of the crime or the anti-social or abborrent nature of the crime such as the following instances."

Then the Supreme Court listed those circumstances under which the rarest of rare cases has to be found for inflicting death penalty. So it leaves absolutely no scope, not even a hazy idea or any confusion, to feel that today in our country the individual is not protected against death penalty or that death penalty can be inflicted straightway by a court whenever there is a murder case. Case after case has altered the law on death penalty, imposition of death penalty, and now it brings in the process of rarest of rare cases where unless the court or the judicial body does not determine that rarest of rare cases with cogent and sound reasons, they cannot resort to this penalty. Therefore, the judicial principles have been enunciated. Not that they have not been enunciated. Much water has flowed since Justice Bhagwati gave that judgement and I must say in the recent past the Supreme Court has been against death penalty being imposed. There is only one case to which Vajpayeeji referred and the Supreme Court went into that case and ultimately life sentence was imposed. The moment it was brought to the notice of the Supreme Court that in one set of circumstances the person was sentenced to life imprisonment while in another case in the same set of circumstances the person was sentenced to death penalty, the supreme Court immediately, granted the relief and gave the lesser penalty because, otherwise, the question of discrimination would arise. So the judiciary is very much awakened to this principle of civilised behaviour and the quality of mercy springs eternal. Therefore, to say that only by going to the Supreme Court elimination of death penalty would be there, is not correct. You can go to the Supreme Court today also. Article 136 gives you sufficient opportunity to go to the Supreme Court. But creating another right of appeal, I must submit, would be rather doing injustice to penalogy and jurisprudence which prevails all over. Then you will have to have a reversal of the whole system of going to the Supreme Court and that, with great respect, at this stage is not warranted. What are the guidelines or standardizations that have been prescribed by the Supreme Court for itself? They are the following:

1. *Manner of commission of murder*:

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

(i) When the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) When the victim is subjected to inhuman acts as of torture or cruelty in order to bring about his or her death.

(iii) When the body of the victim is cut into pieces or his body is dismembered in a friendish manner.

II. Motive for commission of murder:

When the murder is committed for a motive which evinces total depravity and meanness. For instance, when (a) a hired assassin commits murder for the sake of money or reward.

Two, a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or *vis-a-vis* whom the murderer is in a dominating position or in a position of trust; three, a murder is committed in the course for betrayal of the motherland.

Then, anti-social or socially abhorrent nature of the crime: (a) When murder of a member of a Scheduled Caste or minority community, etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance, when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry-deaths', and so on.

Then, another factor is the magnitude of crime, when the crime is enormous in proportion—for instance, when multiple murders, say, of all or almost all the members of a family or a large number of persons of a particular caste, community or locality, are committed.

Then, personality of victim of murder: When the victim of murder is—

(a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder;

(b) a helpless woman or a person rendered helpless by old age or infirmity;

(c) When the victim is a person *vis-a-vis* whom the murderer is in a position of domination or trust;

(d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

In this background, the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises.

I have already submtted with regard to what was said in Bachan Singh's case. The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty, the circumstances of the 'offender' also require to be taken into consideration alongwith the circumstances of the crime. Life imprisonment is the rule and death sentence is an exception. A balancesheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

That is why I say that taking the picture as a whole, the scheme of the criminal law in our country is that 100 guilty persons may go scotfree, but one innocent person should not be sentenced. This is the foundation of our criminal jurisprudence. There is the sessions court which is a superior court. There is Division Bench. It gives him two opportunities, one at the trial stage and one at the appeal stage. They have to set out reasons for inflicting death penalty. Lastly, of course, the Supreme Court is not closed to the offender. You can take special leave and go to the Supreme Court and get your case heard. Once it is heard then it is heard even for months nowadays. Now-a-days the Supreme Court hears cases for months even in criminal matters.

Now, another very important aspect of our Supreme Court is that today it is open

[Hans Raj Bhardwaj]

even to the cases of public interest. It is the only court in the world which hears these cases. Even in Billa Ranga case, they were heard before they were sentenced. Can there be any grievance that they did not have an opportunity to get justice from the Supreme Court? Supreme Court has entertained cases even under Article 32. They went into even the validity of the death sentence in one case. I remember in Rajendra Prasad's case in 1973, Supreme Court 947, the Supreme Court decided about the death penalty. Several petitions were filed when there was no case on facts of the case or the merits of the case. They filed petitions. It is a basic law in the country that writ petitions cannot be filed when other laws are available. The Social Action Litigation Group and Public Interest Litigation has broadened the horizons of the Supreme Court jurisdiction much more than what Vajpayeeji referred to. The enlargement of the scope of the Supreme Court Bill is there. Even if tomorrow we are going to consider it, your suggestions are very valuable. And I am very proud that you have given a very humane approach to this. And this is a very valid point that lives should not be lost for no reason. But I have, with great respect, submitted the broad details for your kind consideration that criminal law in our country is so sound and so lengthy and so safe that it has become almost impossible to convict a criminal even if he is anti-social criminal. Today you have passed one after the other laws, some type of a departure from the basic criminal laws. Why? It is because the laws that we passed in 1890 are no longer relevant. That rule of evidence that nobody in a dying declaration will tell a lie while dying is no longer relevant in India. You have to consider it afresh. The Supreme Court has appreciated in many cases that you proceed to accept a dying declaration with a word of caution unless it is corroborated. If it is a true rule of evidence that you accept a dying man's words on his face, then there is no need for corraboration. But we tell more lies when we die. That is why they said. 'Okay, insist on corroboration". Now the spirit has gone to this extent that when somebody dies, he say, "I am dying, let the three people of the other side also be roped in. This is the law which was then. And the Supreme Court says, Don't proceed on the dying declaration straightway. You see that there is an independent corroboration from other sources." So, this is where we stand today in so far as the death penalty is concerned. And I submit that death penalty is not an ideal situation for any civilzed society. I frankly concede. But the society does not and should not be left to a handful of criminals to play with the lives of innocent people. One may have sweet dreams in his life. They may be cut short by a criminal who has no respect for the society. With great respect I say that such criminals should be treated those rarest of rare cases where the Judges have themselves put the seal of approval. And I have submitted already that the Supreme Court in our country is taking much more liberal view than other courts in other countries. The other courts in other countries are taking extreme views because of their own. You go to America. People talk of America. You will find that more Blacks are being hanged than the whites. I had once gone into the question when the question of condonation of death penalty arose. Only most of the Blacks were sentenced to death and most of the Whites were pardoned. Those social prejudices are there. But in our country, even if somebody is a criminal, habitual and hardened criminal, we have a fantastic scheme of providing legal aid to him during trial at our Government cost and when we forget about the victim who has suffered. What happens to the family which has been ruined completely because of the act of that man who has cut short a person's very precious life? And there what compensation and what rehabilitation is thought of regarding that widow who is left behind high and dry after the death of that person? We should think more in those terms. That is where a balance has to be struck. Death penalty must be retained in the statute book today. And the Supreme Court has properly said that it should not be imposed ordinarily. We must locate at the trial and in appeal and in SLP those rarest of rare cases where death penalty should be a must because the society may demand from you, and this may be a cry in the society that we

want a death penalty in this particular case. And there are cases of that nature. So, while agreeing with the feelings of Vajpayeeji who has raised a very important issue an issue on which a very live society must always consider, including the hon. Vice-Chairman who had a recent visit of Geneva and human rights are still fresh in his mind, I must say I will give all my respectful consideration to all these points that have been made. And we can continue our discussion on such good issues. This is a very valuable issue. I had to do a lot of reading before I could answer you and I think it was not a simple thing why in 134 Act there should not be kept a mandatory clause, giving right to every person who has been ordered to suffer death sentence. But when I went into the very system of the Supreme Court going into 136 and 134, there has to be a change all through. That is why this reluctance on my part. But on principle I fully share his views that in our country we must aspire for a society.... (*Interruptions*).I fully share his view that is the society which breeds criminals and it is our fault if there is crime in the society.

श्रम मंत्रालय में उपमंत्री (श्री रघुवंश किशन सालवीय) : आप इनका समर्थन कर रहे हैं ?

श्री हंसराज भारद्वाज : उनके विचारों से सहमति कई बार करनी पड़ती है । जो अच्छी बात होती है उससे सहमति करनी पड़ती है । उन्होंने जो यह बात कही कि शांति होनी चाहिए, समाज में जरायम नहीं होनी चाहिये, यह बहुत अच्छी बात है । लेकिन मेरे विचार से जब कभी आप पीछे देखेंगे या आगे देखेंगे तो कोई भी समाज ऐसा नहीं है जिसमें विष न हो, क्राइम न रहे हों, पनिशमेंट न रही हो । जहां समाज होना है उसमें छोटे-बड़े जुर्म होते रहते हैं उसको सुधारने का प्रयत्न समाज को करते रहना चाहिये । समाज जितना सुधार कर पायेगा उतने ही जुर्म कम होंगे । इसलिए मैंने उनकी सराहना की । ऐसा कोई समाज नहीं है चाहे वह धनी हो, चाहे गरीब हो, चाहे स्वतन्त्र हो, चाहे गुलाम हो, जहां क्राइम्स न हों । क्राइम्स इंसान की मानसिक वृत्ति में ही है । अगर बुद्धि ठीक काम करती है तो इंसान क्राइम नहीं करेगा । कई बार गुस्से में ऐसी गलत बात कर दी जाती है कि साधारण रूप से नहीं कही जा सकती । मानसिक रूप से क्राइम होते हैं, आर्थिक स्थिति के कारण से भी क्राइम होते हैं, बहुत से कारण हैं जिनकी वजह से क्राइम्स होते हैं ।

मैं यह कहूंगा आपको दोबारा धन्यवाद देते हुये कि आपकी भावना मैंने समझ ली है । मैं इसका आदर करता हूं । यह भी बता दूं कि यह कंस्टीट्यूशनल अमेंडमेंट की जरूरत नहीं थी वह देखा जा सकता है, जैसा आपने खुद कहा । मुझे आशा है आप मेरी इस रिक्वेस्ट को मानेंगे और अपना प्रस्ताव वापस ले लेंगे ।

MESSAGES FROM THE LOK SABHA

I The Punjab Appropriation (Vote on Accounts) Bill, 1988

II The Punjab Appropriation Bill, 1988

SECRETARY-GENERAL: Sir, I have to report to the House the following messages received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:—

I

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Punjab Appropriation (Vote on Account) Bill, 1988, as passed by Lok Sabha at its sitting held on the 24th March, 1988.

The Speaker has certified that this Bill is a Money Bill."

II

"In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business